
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission
On Its Own Motion

Rulemaking concerning the
establishment of mandatory
provisions for money pool
agreements involving public utilities
and incumbent local exchange
carriers

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Docket No. 02-0581

***BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION
ON PROPOSED RULE ON MONEY POOL AGREEMENTS***

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”) and pursuant to Section 200.830 of the Illinois Commerce Commission Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits this brief on exceptions to the Administrative Law Judge’s (“ALJ”) Proposed Order (“PO”) issued on September 11, 2003.

I. INTRODUCTION

Staff agrees with the findings put forward by the ALJ in the PO. The rules as recommended by the ALJ will allow the Commission to meet its objective to: 1) enhance the safety of utility money deposited with or loaned, advanced or temporally transferred to affiliates; 2) ensure that any utility money lent, advanced, or transferred to affiliates does not hinder the utility from carrying out its duty to provide safe, adequate, and reliable utility service; 3) ensure that utilities do not unjustly subsidize affiliates; and 4) provide a high degree of assurance that a borrower would be able to repay the funds borrowed from the utility when needed. Staff has a limited number of exceptions to the PO and or rules. Argument supporting Staff’s exceptions follow. Exceptions language to the rules are included as an attachment to this BOE. Exceptions language to the PO is set forth in this brief.

II. EXCEPTIONS

- A. Filing requirements for minimum information to be filed with petition for approval of money pool agreements.

The proposed rules are intended to enhance the Commission process for reviewing money pool agreements by laying out the minimum requirements for short-term loans between affiliates. Although not previously considered by Staff, Staff believes the rules should contain filing requirements to specify the minimum information a utility should file with its petition to further facilitate the review of petitions for approval of money pool agreements.

Specifically, Section 340.40 should include an additional subsection to identify the information that utilities would be required to file when petitioning the Commission for approval of a money pool agreement with its affiliates. Staff proposes adding subsection 340.40(h) to identify the filing requirements for a utility to demonstrate that an affiliate meets one of the eligibility requirements under subsection 340.40(b).

For the affiliate to borrow from the utility pursuant to subsection 340.40(b)(1), the utility should demonstrate to the Commission that the affiliate has the required A-1/P-1/F-1 commercial paper ratings from Standard & Poor's/Moody's Investors Service/Fitch Ratings ("S&P/Moody's/Fitch") by providing the reports from the credit rating agencies. This filing requirement would become subsection 340.40(h)(1).

For the affiliate of the utility to borrow pursuant to subsection 340.40(b)(2), the utility must demonstrate that the aggregate amount that it would lend to the affiliate will not exceed the unused balance of funds available to the affiliate under high-grade committed credit facilities. The utility should be required to file documentation from qualifying financial institutions evidencing the line of credit available to the affiliate and showing the unused balance of funds available to the affiliate that intends to borrow from the utility. The utility should also be required to provide the credit ratings of the

financial institutions that are extending credit lines to the affiliate to demonstrate that they meet the high-grade credit rating requirements. These filing requirements are contained in proposed subsection 340.40(h)(2).

If the petitioner seeks to qualify an affiliate under subsection 340.40(b)(3), the utility would be required to file a copy of the reports from the three credit rating agencies to demonstrate that the affiliate is a high-grade credit issuer. These reports would be required under subsection 340.40(h)(3).

With respect to eligibility requirement 340.40(b)(4), the utility should be required to demonstrate that the aggregate amount of funds that the affiliate will borrow from the utility is guaranteed by an affiliate of the utility that maintains the A-1/P-1/F-1 commercial paper ratings from S&P/Moody's/Fitch as required under subsection 340.40(b)(1). Subsection 340.40(h)(4) would require the utility to provide with its application for approval of a money pool agreement a copy of the guarantee and the reports from the credit rating agencies that present the ratings of the affiliate that will guarantee the funds borrowed from the utility.

Under subsection 340.40(b)(5), the affiliate may borrow from the utility if the aggregate amount of funds borrowed is guaranteed by an affiliate with a high-grade committed credit facility that meets the requirements set forth in subsection 340.40(b)(2). To demonstrate eligibility under this option, the utility would be required to provide a copy of the guarantee and documentation from the financial institutions evidencing the credit available to the affiliate providing the guarantee and showing the unused balance of funds available to that affiliate. The utility would also provide the credit ratings of the financial institutions that are extending credit lines to the affiliate to

demonstrate that they meet the high-grade credit rating requirements. Subsection 340.40(h)(5) would specify the requirements for filing under subsection 340.40(b)(5).

Proposed subsection 340.40(h)(6) would require that an affiliate seeking to establish its eligibility to borrow from the utility pursuant to subsection 340.40(b)(6) shall provide certification from the chief accounting officer of the proposed affiliate borrower that it is authorized to operate as a utility.

Under subsection 340.40(b)(7), an affiliate would qualify to borrow from the utility if it provides cash management services through a Commission–approved agreement and the utility does not issue indebtedness to non-affiliates of the utility and either (A) the utility is a small utility, or (B) the utility demonstrates that any benefits from relying on an affiliate to provide all of the utility’s capital exceed the risks associated with a decrease in the utility’s financial independence provided that the affiliate is a medium-grade credit issuer. Under Staff’s proposal, the utility would provide the docket number of the Commission proceeding in which the cash management agreement was approved and a copy of the agreement when filing for approval of the money pool agreement. If the utility is a small utility, it would provide certification from the chief accounting officer of the utility that it is a “small utility” and report its total capitalization. If using subsection 340.40(b)(7)(B), the utility must show at a minimum that the affiliate is a medium-grade credit issuer by providing a copy of the reports from the three credit rating agencies for the affiliate that will borrow from the utility. Section 340.40(h)(7) would identify these filing requirements.

B. TECHNICAL CORRECTIONS

The PO reflects a careful analysis of the extensive comments filed by the various parties. However, as can be expected in any initial document there are some minor errors in the PO and or rules. Staff's review has identified the matters set forth below as exceptions warranting correction or clarification.

1. 340.40(b) 7 Requirements

Argument

In the Appendix attached to the PO, Section 340.40(b) states that an affiliate shall be eligible for borrowing from the utility if the affiliate meets "one of the following five requirements:" Given that there are seven requirements listed rather than five (340.40(b)(1)-(7)), the word "five" should be stricken and the word "seven" should be inserted.

2. 340.10(c)

Argument

The PO does not clearly set forth some of the comments filed by Utilities, Inc. (UI) in the rebuttal stage of this proceeding nor the fact that UI had not filed any comments on the proposed rules prior to the rebuttal stage. Additional language and modification is necessary to clarify these points.

Proposed Modification
(PO, p. 14)

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7. Staff Surrebuttal Comments

Staff agrees that with Reregarding to the situation of Utilities Inc. (UI's) situation, Staff agrees that ,which prior to the rebuttal comments stage had not filed any comments, in some cases centralizing the cash management and treasury functions within a single affiliate provides significant economies that should be recognized in the rule. Nevertheless, Staff disagrees with several details in UI's proposal.

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3. 340.40(d)

Argument

The PO's Commission Review and Conclusion addressing Section 340.40(d) states that the Commission adopts Staff's revised language. However, the language set forth in the PO as Staff's revised language omits some of the language that Staff's surrebuttal comments discussed and intended to be part of Section 340.40(d). The Appendix to the PO contains all of Staff's revised language. Therefore, only the PO needs modification.

Proposed Modification
(PO, p. 50)

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6. Commission Review and Conclusion

The Commission agrees with both Staff and ComEd, and adopts Staff's revised language:

(d) The Utility may lend funds to an affiliate only if the utility cannot earn a higher rate of return on investments of similar risk in the open market, or the utility will earn no less than the rate the utility would have earned on investments in existing short-term investment accounts maintained by the utility during the period in question.

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4. Typographical Errors

The following typographical corrections are for the most part self-evident.

Proposed Modifications:

a. (PO, p. 2)

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1. Staff Initial Comments

...Thus, at a minimum, participation in a money pool agreement should do no harm to the utility, and perhaps even benefit the utility. In Docket 95-0615, in analyzing Commonwealth Edison Company's affiliated interest agreement with Unicom, the Commission concluded "if the evidence indicates the benefits to ratepayers are reasonably likely to exceed the costs or harms to ratepayers, then approval of the Agreement would be appropriate."³ Applying the foregoing

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b. (PO, p. 15)

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8. Commission Review and Conclusion

...The Commission will be forced to conclude its decisions ~~on~~ squarely on Part 340.

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c. (PO, pp. 16-17)

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CTC argues that a debt security is "investment grade" ... ~~As noted above~~ Citizens has current credit ratings of BBB/Baa2/BBB from Standard & Poor's, Moody's, and Fitch Ratings, respectively.

Based on the rating agency standards, this means Citizens has a good or adequate ability to repay its long-term debt obligations.

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d. (PO, p. 21)

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default risk, this change is supported by default experience at correlative short-term rating levels. Moody's Investors Service indicates that for a 180-day period, default risks are estimated to be 0.00% for P-1⁺ rated issuer and 0.02% for a P-2 rated issuer (i.e. 2 one-hundredths of 1%). ...

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e. (PO, p.26)

Argument

The first full paragraph on page 26 of the PO refers to a graph that was presented in Staff's surrebuttal comments. However, the graph was not included in the PO. Staff recommends the following changes to the language of the PO in lieu of adding the graph.

Proposed Modification
(PO, p. 26)

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Staff disagrees with CTC's representations that long and short-term credit ratings are interchangeable. Staff argues that short-term debt places far greater demands on the cash flows of a company since the principal must be repaid with far greater frequency. The graph below Staff demonstrated illustrates the greater cash flow required for a short-term borrowing program: by comparing Staff compares the cash flow requirements of maintaining \$1000 of capital through two strategies: 180-day CP

and two \$500 five-year bonds, issued 2.5 years apart. The CP requires the borrower to find a market for \$1000 in debt every six months. The 5-year bond strategy requires the borrower to find a market for \$500 in debt every 30 months. Clearly, the shorter the term to maturity of the debt issue, the greater the liquidity required to support it.

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f. (PO, p. 32)

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3. CTC Initial Comments

...For example, if all of the other rigorous standards included in the Staff's proposed rules could be satisfied, CTC could potentially borrow funds and loan the funds to its affiliate providing regulated telecommunication service in Nebraska.

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g. (PO, p. 34)

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6. CTC Rebuttal Comments

...The only affiliate of CTC that regularly participates in the capital markets is its parent company, Citizens.-

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h. (PO, p. 35-36)

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8. Commission Review and Conclusion

Furthermore, ~~t~~The Commission agrees with Staff that there is no benefit to a utility to borrow externally for the sake of its parent company. While a service company or other affiliate may benefit

from a utilities' ability to borrow externally, the parent company is not in the same situation as the service company.

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i. (PO, p. 36)

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2. Ameren Initial Comments

Ameren notes that Section 340.40(b)(2) of the Proposed Rule would require a borrower – including an affiliated public utility company or a PUHCA approved service company – who did not have A1/P1/F1 short-term credit ratings or an “A” level long-term rating to also maintain either unused lines of credit or liquid investments equal to the amount of money borrowed (or obtain a guarantee from a highly rated affiliate). ~~Ameren contends.~~

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j. (PO, p. 40)

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CTC argues, Staff's Proposed Rule Section 340.40(b)(4) and (b)(5), should follow the long-term debt credit rating thresholds recommended for 340.40(b)(3).

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k. (PO, pp. 42-43)

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Further, the bank market ... On a facility of ~~\$100~~\$100 million, the bank earns only \$125,000 annually on this business. The bank, however, must reserve capital of \$100 million to support this facility; capital that therefore is not available for the bank to use for other purposes. On the other hand, if the bank chose to employ that \$100 million of capital to fund a \$100 million LIB-OR based loan to a similarly rated borrower, it would earn a return of about LIBOR plus 50 basis points (about ~~1~~1.84% based on current rates). Thus, the loan would yield an annual return of ~~\$1~~\$1.8 million, a much better

return than the \$125,000 for the committed credit that remains undrawn.

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l. (PO, p. 43)

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9. UI Rebuttal Comments

UI has some serious concerns ~~that we would like to bring to the attention of Staff~~ regarding how the proposed rule regarding money pools 83 Ill. Adm Code § 340, if adopted, will impact the UI Operating Companies. ...

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m. (PO, p. 44)

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UI states that Nuon may be willing to provide an unconditional guaranty of WSC's obligations to the UI Operating Companies. However, as noted, Nuon only has a single rating which would not qualify it as a guarantor under the Proposed Rule. Furthermore, UI would need relief from the other requirements of the Proposed Rule. ~~We~~UI would like to discuss with Staff possible alternative means of insuring the safety of the Illinois UI Operating Companies' funds.

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n. (PO, p. 48)

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2. ComEd Initial Comments

ComEd believes that the portion of the Proposed Rule regarding the rate of return required in order for a utility to lend money to an affiliate should be amended. The Proposed Rule currently provides, in this regard, that:

d) The Utility shall not lend funds to an affiliate if the utility can earn a higher rate of return on investments of similar risk in the open market.

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o. (PO, p. 53)

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Section 340.60(d) of the Proposed Rule requires ... For the same reasons as those discussed above with respect to Section 340.60(c), SBC proposes that this section be revised to impose the ten day reporting requirement only for downgrades of the credit rating of any affiliate holding a direct borrowing relationship with the utility.

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p. (PO, p. 55)

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To address these concerns, CTC recommends that Section 340.60(d) be revised as follows:

d) Any credit rating downgrades to any affiliate that has borrowed from the utility by a credit ratings agency shall be reported to the utility and the Manager of the Commission's Finance Department within ~~ten~~ thirty days after any such downgrade. Each filing shall state on its face the Docket number of the proceeding authorizing the utility's participation in the money pool agreement. Absent further investigation and an order from the Commission, the credit rating agency downgrade will not be deemed a violation of these rules or trigger any requirement to restructure the loan from the utility to the affiliate.

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q. (PO, p. 57)

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Verizon suggests that the rules be modified to incorporate notification of credit ...Other changes in credit ratings can be monitored on a quarterly basis as part of the reports required under Section 14-340.60(b)(2).

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r. (340.20, Credit rating agency)

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“Credit ratings agency” means Standard & Poor's or its successor, Moody's Investors Service or its successor, or Fitch Ratings or its successor.

III. CONCLUSION

WHEREFORE, for the reasons set forth, the Staff of the Illinois Commerce Commission respectfully requests that its modifications to the Administrative Law Judge's Proposed Order and Proposed Rule on Money Pool Agreements be adopted.

Respectfully submitted,

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